

**REMARKS**

Claims 1-18, 23 and 26-35 were previously pending in this application. By this amendment, Applicant is canceling claims 26, 27 and 31-35 without prejudice or disclaimer. Claims 1, 2, 8, 15, 23, 26 and 28-30 have been amended. New claims 36-40 has been added. As a result claims 1-18, 23, 28-30 and 36-39 are pending for examination with claims 1, 23, 28 and 40 being independent claims. No new matter has been added. The application as presented is believed to be in condition for allowance.

**Rejections Under 35 U.S.C. §103**

Claims 1-3, 8-14, 23 and 26-35 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Whitby (UK Patent Application 2 258 201 A) in view of U.S. Patent No. 6,282,611 to Hamamoto (hereinafter Hamamoto). Applicant has amended independent claims 1, 23 and 28 to further distinguish over the art of record. Dependent claims 2, 8 and 29-30 have been amended for consistency in view of the amendments to the independent claims. Claims 26, 27 and 31-35 have been canceled and the rejection is thus moot with respect to those claims.

Whitby is directed to a radio receiver for receiving broadcast programming. The radio receiver includes a random access memory for recording the program signal, in digital form, and a controller that allows a user to play back the program signal stored in the memory.

Hamamoto is directed to a digital information system for realizing the sale of information or the like having a commercial value in the form of a digital signal, the system including an audio processor and signal processor suitably used with the system. According to Hamamoto, when a digital signal is received/delivered, a digital signal source is connected directly to a player for receiving and storing the digital signal information, which is reproduced by the player independently. Thus, Hamamoto discloses a device for receiving and storing a broadcast signal, which can subsequently be played. Hamamoto also discloses a method for subsequently processing the voice interval of a digital audio signal so as to allow slow and fast playback of the audio signal without deteriorating the sound quality.

Applicant's independent claim 1, as amended, recites a "repeat circuit for use with an audio receive and reproduce device that has a normal mode and a replay mode, the repeat

circuit including...a control adapted to switch said audio receive and reproduce device into replay mode by inhibiting application of incoming audio inputs to said device and for instead applying at least a portion of audio inputs stored in said RAM as audio inputs to said device via the replay audio input of said device, the audio reproduced by said device being selectively delayed from incoming audio inputs by a time dependent on where in said RAM said control begins the applying of audio inputs to said device.” Applicant’s claim 1 further recites that the “device is configured to automatically control the rate at which said RAM is read out to said replay audio input of said device, said RAM being read out to said replay audio input of said device at a replay rate that is different than an incoming rate at which the incoming audio inputs are received to be stored in said RAM; wherein said replay rate is selected so as to gradually eliminate the delay time without substantially impairing audio quality of the replayed audio, thereby automatically returning said device to normal mode. Such a repeat circuit is not disclosed or suggested by the prior art of record.

In the Final Office Action, the Examiner acknowledges that Whitby fails to disclose reading out audio from the RAM at a rate different than the rate at which the incoming audio inputs are received to be stored in the RAM. The Examiner points to Hamamoto as disclosing fast/slow playback of stored audio and states that “it would have been obvious...to apply Hamamoto’s fast/slow playback circuit teachings to Whitby’s playback device in order to slow down and speed up playback of recorded signals.” However, without acceding to the appropriateness of the asserted combination, even taken in combination, as suggested in the Office Action, Whitby and Hamamoto fail to disclose or suggest features of Applicant’s claim 1, as amended.

Specifically, Claim 1, as amended, specifies that the audio reproduced by said device is delayed from incoming audio inputs by a time dependent on where in said RAM said control begins the applying of audio inputs to said device and that the replay rate is “selected so as to gradually eliminate the delay time without substantially impairing audio quality of the replayed audio, thereby automatically returning said device to normal mode” (emphasis added). Hamamoto discusses only fast/slow playback of stored audio so as to allow a user to skip over unwanted audio or listen more carefully to desired audio, but Hamamoto does not disclose automatically controlling the replay rate so as to gradually eliminate the delay time

between the incoming signal and the played out signal, effectively allowing the device to “catch up” to real-time incoming audio. Such a feature is completely absent from Hamamoto and from Whitby.

Even if one combines Hamamoto and Whitby as suggested in the Office Action, at best one simply arrives at a playback device such as that described in Whitby that allows a user to control fast/slow playback as taught by Hamamoto. However, this combination certainly does not disclose or suggest a device having the automatic “catching up” feature recited in Applicant’s claim that automatically returns the device from replay mode into normal mode. Further, this feature is not an obvious modification of Whitby and Hamamoto, since it is entirely missing from both references (whether taken alone or in combination) and neither reference contemplates such an automatic transition from replay mode to normal mode. This feature is disclosed and explained in Applicant’s specification (for example, on page 11, lines 8-16) and it is only when one considers Whitby in light of Applicant’s specification that one might be motivated to modify Whitby to incorporate this feature. However, such a hindsight reasoning based on Applicant’s own specification cannot be used to reject Applicant’s claims. The references of record fail to disclose or suggest all of the elements now present in Applicant’s claim 1, and claim 1 is therefore patentable in view of the art of record. Accordingly, withdrawal of the rejection of claim 1 is respectfully requested.

Claims 2, 3 and 8-14, depend from claim 1 and are therefore allowable for at least the same reasons as discussed for claim 1. Accordingly, withdrawal of the rejection of claims 2, 3 and 8-14 is respectfully requested.

Dependent claims 4, 6, 7 and 15-18 stand rejected over Whitby in view of Hamamoto and in further view of one of several other references. Applicant does not agree with the Examiner’s interpretation of the claims or of the additional references. However, none of the additional references cure the deficiencies of the asserted combination of Whitby and Hamamoto because none of the reference, whether taken alone or in combination with Whitby and Hamamoto, discloses or suggests a repeat circuit adapted such that the replay rate is “selected so as to gradually eliminate the delay time without impairing audio quality of the replayed audio, thereby automatically returning said device to normal mode,” as is recited in

Applicant's claim 1, as amended. Therefore, these references fail to cure the deficiencies of Whitby and Hamamoto. Accordingly, claims 4, 6, 7 and 15-18 are patentable for at least the same reasons as discussed for claim 1 and withdrawal of the rejections of these claims is respectfully requested.

Applicant's independent claim 23, as amended, recites a "method for controlling replay of at least a portion of an incoming audio signal received by a radio." The method includes "inhibiting output of the currently received audio signal by said radio and instead replaying at least a portion of the stored portion of the audio signal, the replayed portion being selectively delayed from the incoming audio signal by a time period" and "controlling a play rate of the stored portion so as to play the stored portion at the play rate being higher than the input rate so as to gradually eliminate the time period, the play rate being sufficiently slow so as not to substantially impair audio quality of the stored portion during play." As discussed above in reference to claim 1, neither Whitby nor Hamamoto, whether taken alone or in combination, discloses or suggests "controlling a play rate of the stored portion so as to play the stored portion at the play rate being higher than the input rate so as to gradually eliminate the time period," effectively allowing the device to "catch up" to the incoming audio signal. Therefore, for at least this reason, claim 23, as amended, is patentable over the art of record. Accordingly, withdrawal of this rejection is respectfully requested.

Applicant's independent claim 28, as amended, recites a "repeat circuit for use with a radio having a normal mode and a replay mode, the repeat circuit including...a control adapted to switch said radio from normal mode into replay mode...the audio reproduced by said device being selectively delayed from the incoming audio inputs by a time period; wherein said radio is automatically returned from replay mode to normal mode with incoming audio inputs applied to said radio when there is a station change on said radio." In the Office Action, the Examiner states (in reference to claim 11) that "Whitby further discloses that a user can command the microprocessor to tune to a desired station (page 5, lines 14-15) and the audio signal passes directly to the output and to the memory in digital form (page 7, lines 18-23)." The Examiner further states that "it is inherent that as the user changes the station the system will begin recording as normal" because "this maintains the purpose of the

invention...in which a user can playback something just heard.” Applicant respectfully disagrees.

“Normal mode” is defined in Applicant’s specification to mean a mode in which incoming audio inputs are applied directly to the audio inputs of the radio. In other words, a mode in which the user is listening to a real-time incoming signal. By contrast, “replay mode” is defined as a mode in which the audio input to the radio is received from the RAM. In other words, the incoming audio has been stored in RAM and is now being played out, while the current incoming audio is inhibited from the radio (either discarded or stored in the RAM to be played out after a time delay). Whitby neither discloses automatic switching between these modes when the radio station is changed, nor is this feature inherent in Whitby. The Examiner points simply to portions of Whitby that describe a user’s ability to tune the device (page 5) and one operation of the device (page 7) in which the audio is passed directly to the radio (similar to Applicant’s normal mode). However, there is nothing in Whitby that discloses or suggests that if the device is a replay mode (i.e., is storing and delayedly playing out audio) that changing the radio station will “inherently” cause the device to change into a different mode. To be “inherent,” “the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” (see MPEP 2112). There is nothing in Whitby to suggest that changing the radio station would necessarily require the device to also change from replay mode into normal mode. Therefore, this element is not disclosed either explicitly or inherently by Whitby. Furthermore, this feature is not shown in Hamamoto or any other reference of record, whether taken alone or in combination with Whitby. Therefore, for at least these reasons, Applicant’s claim 28, as amended, is patentable over the art of record and withdrawal of the rejection of claim 28 is respectfully requested.

Claims 29 and 30 depend from claim 28 and are therefore allowable for at least the same reasons as discussed for claim 28. Accordingly, withdrawal of the rejection of claims 28 and 30 is respectfully requested.

### Newly Added Claims

Applicant has added new claims 36-40 to further define Applicant's contribution to the art. New independent claim 40 is supported by the specification, for example, on page 11, lines 8-16. New dependent claims 36-39 incorporate subject matter that was removed from previously pending claims by the amendment or cancellation of claims 1, 2, 8, 15, 23 and 26-35. Therefore, no new matter has been added.

Each of dependent claims 36-39 depends from one of independent claims 1 and 28 discussed above, and is therefore allowable for at least the same reason as discussed in reference to its respective base claim.

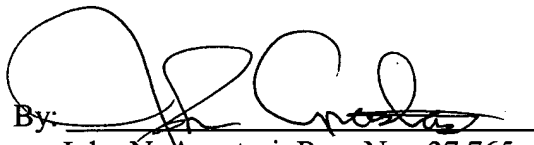
New independent claim 40 recites a "method of controlling play of at least a portion of an incoming audio signal received by a radio; the method comprising...replaying the stored portion of the audio signal, the replayed portion being selectively delayed from the incoming audio signal by a time period; and catching up to the incoming audio signal by playing the stored portion at a second rate higher than the first rate so as to gradually eliminate the time period, the second rate being sufficiently slow so as not to substantially impair audio quality of the stored portion during play." As discussed above, the references of record, whether taken alone or in combination, fail to disclose or suggest such a feature of "catching up" the played out stored signal to the presently incoming signal without substantially impairing audio quality of the played out stored signal. Therefore, for at least this reasons, new claim 40 is patentable over the art of record and is believed to be in condition for allowance.

### CONCLUSION

In view of the foregoing amendments and remarks, reconsideration is respectfully requested. This application should now be in condition for allowance; a notice to this effect is respectfully requested. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicant's attorney at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 50/2762.

Respectfully submitted,  
*Kenneth P. Weiss, Applicant*

By:   
John N. Anastasi, Reg. No. 37,765  
LOWRIE, LANDO & ANASTASI, LLP  
One Main Street  
Cambridge, Massachusetts 02142  
United States of America  
Telephone: 617-395-7000  
Facsimile: 617-395-7070

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